

**IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF WEST VIRGINIA  
AT HUNTINGTON**

**MICHAEL WALKER, individually,**

**Plaintiff,**

**v.**

**Civil Action No. 3:18-cv-01523  
Honorable Robert C. Chambers**

**M.H. LOVEJOY, in his individual capacity;  
B.E. DONAHOE, in his individual capacity;  
B.W. PAULEY, in his individual capacity;  
PUTMAN COUNTY COMMISSION, a  
political subdivision of the State of West  
Virginia,**

**Defendants.**

**DEFENDANTS' PARTIAL MOTION TO DISMISS**

COME NOW, these Defendants, M. H. Lovejoy, B. E. Donahoe, B. W. Pauley, and the Putnam County Commission, by counsel and through their counsel, Charles R. Bailey, John P. Fuller, Adam K. Strider, and the law firm of Bailey & Wyant, PLLC, and hereby move this Honorable Court dismiss certain of the Plaintiff's claims, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure.

Specifically, Counts I, II, and V are legally unviable, and warrant dismissal. Counts I and II, which respectively state claims for Unlawful Search and Seizure and False Arrest pursuant to 42 U.S.C. § 1983, require dismissal because Deputy Lovejoy is entitled to qualified immunity for his actions alleged by the Plaintiff. Specifically, Deputy Lovejoy performed a legally-justified Terry frisk to remove a weapon from the Plaintiff while investigating a domestic disturbance. Further, Deputy Lovejoy's arrest of the Plaintiff for Obstructing an Officer, even when taking Plaintiff's factual allegations at face value, was undertaken with probable cause.

Count V, which alleges a claim against the Putnam County Commission for municipal liability due to the actions of the deputies alleged in the Complaint, fails to state a claim under *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 691, 98 S. Ct. 2018, 2036 (1978). First, because the claims against Deputy Lovejoy fail to allege a constitutional violation, there can be no derivative *Monell* claim. Second, the Plaintiff also cannot premise a *Monell* claim against the Commission on the actions of Deputies Donahoe and Pauley, because he has failed to allege facts beyond bare conclusory allegations that a municipal policy of constitutional violations existed.

**THESE DEFENDANTS HEREBY DEMANDS A TRIAL BY JURY.**

**WHEREFORE**, based on the foregoing, as more fully discussed in the contemporaneously-filed Memorandum in Support of Defendants' Partial Motion to Dismiss, the Defendants respectfully pray this Honorable Court GRANT their Partial Motion to Dismiss, and dismiss the claims alleged under Counts I, II, and V of the Plaintiff's Complaint. Further, as all claims against Deputy Lovejoy included in the Complaint are subject to this Motion, Deputy Lovejoy hereby moves that that he be dismissed as a defendant in this civil action.

**M.H. LOVEJOY, B.E. DONAHOE, B.W.  
PAULEY, and the PUTMAN COUNTY  
COMMISSION,**

**By Counsel,**

/s/ John P. Fuller  
**Charles R. Bailey (WV Bar #0202)**  
**John P. Fuller (WV Bar #9116)**  
**Adam K. Strider (WV Bar #12483)**  
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the State of West Virginia,**

**Defendants.**

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of foregoing “**Defendants’ Partial Motion to Dismiss**” was served upon the following parties through the Court’s Electronic Case Filing (ECF) system on this day, Wednesday, January 30, 2019:

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*Counsel for Plaintiff Michael Walker*

**/s/ John P. Fuller**

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